

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	I.D. # 83007303DI
)	
)	
CHARLES BLIZZARD,)	
)	
Defendant/Appellant.)	

Date Submitted: January 26, 2009
Date Decided: February 18, 2009

ORDER

AND NOW, TO WIT, this 18th day of February, 2009, having heard and duly considered Defendant's *pro se* Motion for Transcripts and Motion to Proceed *In Forma Pauperis* **IT IS HEREBY ORDERED** as follows:

1. On March 20, 1984, Charles Blizzard ("Blizzard") was convicted by a jury of Murder First Degree (felony murder), Robbery First Degree and Conspiracy Second Degree. On September 4, 1984, he was sentenced to life imprisonment without parole on the murder charge, three years imprisonment for robbery and two years for conspiracy.¹ The Delaware Supreme Court affirmed his convictions and sentences on July 28, 1986.²

¹ Sentencing Order, Docket Item ("D.I.") 21.

² *Blizzard v. State*, 513 A.2d 1318 (Del. 1986).

2. On February 26, 2008, Blizzard filed a *pro se* Motion for Postconviction Relief (“Motion”).³ The Court requested supplemental briefing from the parties. The record was complete for judicial review of the Motion on November 24, 2008. On December 10, 2008, this Court addressed the substantive merits of Blizzard’s claims and denied the Motion.⁴ Blizzard is now appealing the Superior Court’s denial of his postconviction relief; that appeal is pending before the Delaware Supreme Court.⁵
3. On January 26, 2009, Blizzard filed his present motion for trial and sentencing transcripts⁶ as well as a motion to proceed *in forma pauperis*.⁷
4. A defendant-appellant has “no absolute right to a transcript to assist him in preparation of a collateral attack on his conviction.”⁸ He must state specific, non-frivolous, legal grounds for which the furnishing of transcripts is necessary.⁹ The defendant-appellant “bears the burden of producing such portions of the transcript as are necessary to give . . . [the

³ Def.’s Mot. for Postconviction Relief, D.I. 39.

⁴ *State v. Blizzard*, 2008 WL 5206769 (Del. Super. Dec. 10, 2008). (finding sufficient evidence to show that “Blizzard committed murder ‘in furtherance of’ the robbery and Blizzard’s conviction of felony murder must stand.”)

⁵ The Superior Court, as the trial court, “retain[s] jurisdiction over all issues relating to the ordering of transcript in cases on appeal[,]” while an appeal is pending before the Supreme Court. Supreme Ct. R. 9(i).

⁶ Def.’s Motion for Preparation of Transcript (“Motion for Transcripts”), D.I. 54.

⁷ D.I. 52.

⁸ *State v. Bordley*, 1989 WL 135691, at *1 (Del. Super. Oct. 26, 1989) (Steele, J.).

⁹ See *State v. Allen*, 2002 WL 31814759 (Del. Super. Nov. 4, 2002).

Delaware Supreme] Court a fair and accurate account of the context on which the claims of error occurred.”¹⁰

5. The Court in *Hammond* cited Supreme Court Rule 9(e). Rule 9(e)(i) governs Criminal Class A Felonies, while Rule 9(e)(ii), governs “[a]ll other cases.”¹¹ Class A Felonies require “the preparation of the transcript of the entire trial excluding opening and closing arguments of counsel and jury selection.”¹² In “all other cases,” however, the Rule provides for only the portions of transcripts “as are deemed necessary to be transcribed for inclusion in the record” on appeal.¹³
6. Blizzard is currently serving a life sentence for a conviction of Murder First Degree, which is a Class A Felony. Blizzard states in his motion that the trial and sentencing transcripts are necessary to help him establish that the felony murder for which he was convicted “was not in furtherance of the said robbery and conspiracy, and that they were indeed after the fact.”¹⁴ Blizzard further cites to factual distinctions represented in case-law that could potentially assist his argument on appeal.¹⁵

¹⁰ *Hammond v. State*, 1992 WL 135162, at *2 citing Supreme Ct. R. 9(e)(ii), 14(e), and *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

¹¹ Supreme Ct. R. 9(e).

¹² R. 9(e)(i). This rule applies only to Class A Felony cases in which the death penalty is not at issue. *Id.*

¹³ R. 9(e)(ii).

¹⁴ Motion for Transcripts, ¶10.

¹⁵ *Id.*

7. Blizzard has met his burden by citing to specific legal and factual bases for his trial transcripts. His request is not vague, nor does it appear to be frivolous in regard to the trial transcripts. Blizzard has not stated grounds entitling him to the sentencing transcripts. The Court therefore **GRANTS** Blizzard's request for the trial transcripts and **DENIES** his request for the sentencing transcripts.
8. Blizzard seeks to proceed *in forma pauperis* and asks this Court to waive his obligation to pay for the trial transcripts. Delaware Supreme Court Rule 9(h), "*Payment of cost of transcripts[,]*" permits an indigent party to apply for "an order determining responsibility for payment of the cost of the transcript at public expense when such payment is required or permissible under law." As a general rule, indigent criminal defendants are "entitled, at public expense, to all or such portions of the transcript of their trial as may be necessary" to appeal a criminal sentence.¹⁶ As the United States Supreme Court has held, "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has."¹⁷
9. In his "Affidavit in Support of Application to Proceed *In Forma Pauperis*," Blizzard states that he has no real estate, personal property, or

¹⁶ *State v. Pendry*, 367 A.2d 624, 627 (Del. 1976), citing *Griffin v. Illinois*, 351 U.S. 12, 76 (1956); *State v. Clark*, 2005 WL 2649902 (Del. Super. Oct. 17, 2005).

¹⁷ *Griffin*, 351 U.S. 12 at 19.

bank accounts. The average daily balance on his inmate account for the past six months is \$33.32.¹⁸ Blizzard receives about \$100 per month in income and gifts, which roughly correlates to his monthly expenses for food, stamps, and cosmetics. Blizzard has satisfied the procedural requirements¹⁹ and adequately demonstrated financial need. His application to proceed *in forma pauperis* is therefore **GRANTED**. He will not be required to pay fees or court costs associated with his appeal, including the costs of his trial transcripts.

WHEREFORE, Blizzard's motion for trial and sentencing transcripts is **GRANTED** in part and **DENIED** in part, and his motion to proceed *in forma pauperis* is **GRANTED**.

IT IS SO ORDERED.

Jan. R. Jurden, Judge

¹⁸ Inmate Account Activity Statement, as attached to Blizzard's Motion to Proceed *in Forma Pauperis*.

¹⁹ 10 *Del. C.* §§ 8802 – 8804.